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Attorney for Plaintiff, APS&EE, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

APS&EE, LLC, a limited liability company,)
Plaintiff,)
v.)
FRENCH BULL, LLC, a limited liability)
company, KIM'S HOME CENTER, INC., a)
corporation, and DOES 1 through 100,)
inclusive,)
Defendants.)

CASE NO. 24STCV00104

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Jon R. Takasugi

Dept.: 17

Compl. Filed: January 3, 2024

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and
4 between APS&EE, LLC (“Plaintiff”) and Kim’s Home Center, Inc. (“Defendant”). Plaintiff and
5 Defendant shall hereinafter collectively be referred to as the “Parties.”

6 **1.1.2** Plaintiff is an organization based in California with an interest in
7 protecting the environment, improving human health and the health of ecosystems, and
8 supporting environmentally sound practices, which includes promoting awareness of exposure to
9 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

10 **1.1.3** Plaintiff alleges that Defendant is a person in the course of doing business
11 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition
12 65”).

13 **1.2 Allegations**

14 **1.2.1** Plaintiff alleges that Defendant sold: 1) “French Bull” brand of coffee
15 mugs, including but not limited to V Mug, VM-46PZI (ZIGGY) 13000269, 8-806179-691146,
16 and 2) “My love, my style, my neighbor Totoro” coffee mug, CUP22D (hereinafter collectively,
17 the “Products”), in the State of California causing users in California to be exposed to hazardous
18 levels of Lead without providing “clear and reasonable warnings”, in violation of Proposition 65.
19 Lead is potentially subject to Proposition 65 warning requirements because it is listed as known
20 to cause cancer and birth defects or other reproductive harm.

21 **1.2.2** On September 28, 2023, Plaintiff sent a Sixty-Day Notice of Violation
22 (the “September 28 Notice”) to Defendant and the various public enforcement agencies
23 regarding the alleged violation of Proposition 65 with respect to the "My love, my style, my
24 neighbor Totoro" coffee mug, CUP22D. On October 5, 2023, Plaintiff served a Sixty-Day Notice
25 of Violation with a Certificate of Merit (the “October 5 Notice”), to Defendant and the various
26 public enforcement agencies with respect to the Proposition 65 violations related to Lead in the
27 “French Bull” mugs. The September 28 Notice and the October 5 Notice shall collectively be
28 referred to as the “Notices”. On January 3, 2024, Plaintiff, acting in the public interest, filed the

1 instant action (the “Complaint”) in the Superior Court for the County of Los Angeles, alleging
2 violations of Proposition 65.

3 **1.3 No Admissions**

4 Defendant denies all allegations in Plaintiff’s Notices and Complaint and maintains that
5 the Products have been, and are, in compliance with all laws, and that Defendant has not violated
6 Proposition 65. This Consent Judgment shall not be construed as an admission of liability by
7 Defendant but to the contrary as a compromise of claims that are expressly contested and denied.
8 However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities
9 under this Consent Judgment.

10 **1.4 Compromise**

11 The Parties enter into this Consent Judgment in order to resolve the controversy
12 described above in a manner consistent with prior Proposition 65 settlements and consent
13 judgments that were entered in the public interest and to avoid prolonged and costly litigation
14 between them.

15 **1.5 Jurisdiction and Venue**

16 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
17 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
18 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
19 this Consent Judgment pursuant to California Code of Civil Procedure Section 664.6 and
20 Proposition 65.

21 **1.6 Effective Date**

22 The “Effective Date” shall be the date this Consent Judgment is approved and entered by
23 the Court.

24 **2. INJUNCTIVE RELIEF**

25 **2.1 Reformulation Standard**

26 After the Effective Date, Defendant shall not distribute for sale in California, sell or offer
27 for sale the Products in California unless (a) the Products produce a test result no higher than 1.0
28 microgram of lead based on a wipe sample collected using NIOSH Method 9100 or equivalent

(“Reformulated Product”), or (b) the Products are distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2.

2.2 Clear And Reasonable Warnings

For any Products that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. Defendant shall provide a warning statement substantially similar to the following:

WARNING: This product can expose you to Lead which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

The Products shall carry said warning directly on each unit, label, or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is sold by Defendant on the internet to persons located in California shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product. For Products that Defendant provides for a downstream entity to sell on the internet, Defendant shall include an instruction that the entity comply with the warning requirements of this section.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a total civil penalty of one thousand five hundred dollars (\$1,500.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,125.00)

1 for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the
2 remaining 25% (\$375.00) for Plaintiff.

3 Defendant shall issue these payments collectively as part of the total payment described
4 below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the
5 wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective
6 payments to OEHHA and APS&EE.

7 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

8 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
9 incurred in prosecuting the instant action for all work performed through execution and approval
10 of this Consent Judgment, in the amount of thirteen thousand five hundred dollars (\$13,500.00).
11 Accordingly, Defendant shall remit total payment via wire transfer to Law Offices of Lucas T.
12 Novak in the amount of fifteen thousand dollars (\$15,000.00), which includes the civil penalty
13 described in Section 3.1, within five (5) business days of the Effective Date. Wire instructions
14 have been exchanged between the Parties’ counsel.

15 **4. RELEASES**

16 **4.1 Plaintiff’s Release Of Defendant**

17 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
18 the promises and monetary payments contained herein, hereby releases Defendant, its parents,
19 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
20 assignees, and Defendant’s downstream distributors, retailers, and franchisees (all of the
21 foregoing, collectively “Released Parties”), from any alleged Proposition 65 violation claims
22 asserted in Plaintiff’s Notices or Complaint regarding failure to warn about Lead exposure from
23 the Products sold by Defendant before and up to the Effective Date. For the sake of clarity, the
24 releases herein do not apply to entities in the chain of distribution of the Products upstream from
25 Defendant (e.g., French Bull, LLC).

26 **4.2 Defendant’s Release Of Plaintiff**

27 Defendant, by this Consent Judgment, waives all rights to institute any form of legal
28 action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,

1 experts, successors and assignees for actions or statements made or undertaken, whether in the
2 course of investigating claims or seeking enforcement of Proposition 65 against Defendant in
3 this matter. If any Released Party should institute any such action, then Plaintiff's release of said
4 Released Party in this Consent Judgment shall be rendered void and unenforceable.

5 **4.3 Waiver Of Unknown Claims**

6 Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil
7 Code which provides as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
9 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
11 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
12 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
13 DEBTOR OR RELEASED PARTY.

14 Each of the Parties waives and relinquishes any right or benefit it has or may have under
15 Section 1542 of California Civil Code or any similar provision under the statutory or non-
16 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights
17 and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,
18 or different from, those that it believes to be true with respect to the claims released herein. The
19 Parties agree that this Consent Judgment and the releases contained herein shall be and remain
20 effective in all respects notwithstanding the discovery of such additional or different facts.

21 **5. COURT APPROVAL**

22 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
23 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
24 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
25 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
26 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
27 support the entry of this agreement in a timely manner, including cooperating on drafting and
28 filing any papers in support of the required motion for judicial approval.

6. **SEVERABILITY**

Should any part or provision of this Consent Judgment for any reason be declared by a

Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California. This Consent Judgment is entered into in the State of California and may only be enforced in the State of California.

8. NOTICES

All correspondence and notice required to be provided under this Consent Judgment shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO DEFENDANT:

Frank E. Marchetti, Esq.
Law Offices of Chanhoo C. Joo
3731 Wilshire Blvd., Suite 635
Los Angeles, CA 90010

TO PLAINTIFF:

Lucas T. Novak, Esq.
Law Offices of Lucas T. Novak
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

9. COUNTERPARTS

This Consent Judgment may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Consent Judgment shall have the same force and effect as the originals.

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1 **10. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
4 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
5 Consent Judgment and is not subject to any conflicting obligation that will or might prevent or
6 interfere with the execution or performance of this Consent Judgment by said Party.

7
8 **AGREED TO:**

9 Date: 6.19.2024

10 By: [Signature]
11 Authorized Representative of APS&EE, LLC

12
13 **AGREED TO:**

14 Date: 6/19/2024

15 By: [Signature]
16 Authorized Representative of Kim's Home Center, Inc.

17
18 **IT IS SO ORDERED.**

19 Dated: _____

JUDGE OF THE SUPERIOR COURT